



PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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|--|--|---|---------------------|
| Applicant's or agent's file reference NO 7677/WO | FOR FURTHER ACTION | | See Form PCT/PEA416 |
| International application No. PCT/EP2005/003089 | International filing date (<i>day/month/year</i>) 23.03.2005 | Priority date (<i>day/month/year</i>) 24.03.2004 | |
| International Patent Classification (IPC) or national classification and IPC INV. A23C9/13 | | | |
| Applicant NESTEC S.A. | | | |
| 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 6 sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> <i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). | | | |
| 4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application | | | |
| Date of submission of the demand 29.08.2005 | | Date of completion of this report 08.05.2006 | |
| Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016 | | Authorized officer Inceisa, L Telephone No. +31 70 340-3876  | |

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003089

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-15 as originally filed

Claims, Numbers

1-15 as originally filed

Drawings, Sheets

1-2 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003089

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 10,12,13

because:

- ☒ the said international application, or the said claims Nos. 10,13 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 12 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

- ☐ no international search report has been established for the said claims Nos.

- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished
☐ does not comply with the standard

the computer readable form ☐ has not been furnished
☐ does not comply with the standard

- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

- ☐ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003089

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|---------------|
| Novelty (N) | Yes: Claims | 1-10,13,14 |
| | No: Claims | 11 |
| Inventive step (IS) | Yes: Claims | 1-10,13,14 |
| | No: Claims | 11 |
| Industrial applicability (IA) | Yes: Claims | 1-9, 11,12,14 |
| | No: Claims | |

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

I. Claim 12 refers to a product, which can be stored for at least one month at temperatures above 10°C. The claim 12 does not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not defined. The claim attempts to define the subject-matter in terms of the result to be achieved, which merely amounts to a statement of the underlying problem, without providing the technical features necessary for achieving this result.

II. The subject-matter of claims 10 & 13 relate to a method for administering a composition to the human body. The method also includes the prevention and treatment of diseases (e.g. infections, cancer, diarrhea, immunomodulation; see description p. 1 §3). The claims therefore relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

- D1: EP-A-0667106
- D2: International Dairy Journal, 13(10), p. 835-839, 2003 (Abstract from FSTA)
- D3: JP-A-63309138 (Abstract from WPI)

1. ARTICLE 33(2) PCT (NOVELTY)

The present application does not meet the criteria of Article 33(1) PCT, because the

subject-matter of claim 11 is not new in the sense of Article 33(2) PCT.

The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claim 11 is not new in the sense of Article 54(1) and (2) EPC.

The claim relates to the use of microorganisms in water- or milk based products. Such products are known from documents D1-D3 (see cited passages in the Search Report).

2. ARTICLE 33(3) (INVENTIVE STEP)

The subject-matter of claims 1-10, 13 & 14 is neither disclosed nor readily derivable from the available prior art.